

**HOUSE BILL No. 2704**

By Committee on Commerce, Labor and Economic Development

2-11

1 AN ACT concerning workers compensation; making notification to an  
2 injured employee by an employer or insurance carrier of changes to or  
3 termination of medical or disability benefits discretionary; providing  
4 that an employee seeking benefits waives the patient privilege  
5 preventing access to medical records and healthcare providers;  
6 prohibiting infringement of the employer's right to direct medical  
7 treatment; requiring questions by the director of workers compensation  
8 to a healthcare provider in the case of an examination ordered by the  
9 director to be in writing; providing that a partial week be counted as a  
10 full week for purposes of computing average wages; excluding costs  
11 for expert witnesses from court costs to be awarded to a claimant;  
12 amending K.S.A. 44-510c, 44-510e, 44-510h, 44-510k, 44-511 and 44-  
13 516 and repealing the existing sections.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 44-510c is hereby amended to read as follows: 44-  
17 510c. Where death does not result from the injury, compensation shall be  
18 paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto,  
19 and as follows:

20 (a) (1) Where permanent total disability results from the injury,  
21 weekly payments shall be made during the period of permanent total  
22 disability in a sum equal to  $66\frac{2}{3}\%$  of the average weekly wage of the  
23 injured employee, computed as provided in K.S.A. 44-511, and  
24 amendments thereto, but in no case less than \$25 per week nor more than  
25 the dollar amount nearest to 75% of the state's average weekly wage,  
26 determined as provided in K.S.A. 44-511, and amendments thereto, per  
27 week. The payment of compensation for permanent total disability shall  
28 continue for the duration of such disability, subject to review and  
29 modification as provided in K.S.A. 44-528, and amendments thereto.

30 (2) Permanent total disability exists when the employee, on account  
31 of the injury, has been rendered completely and permanently incapable of  
32 engaging in any type of substantial and gainful employment. Expert  
33 evidence shall be required to prove permanent total disability.

34 (3) An injured worker shall not be eligible to receive more than one  
35 award of workers compensation permanent total disability in such worker's  
36 lifetime.

1 (b) (1) Where temporary total disability results from the injury, no  
2 compensation shall be paid during the first week of disability, except that  
3 provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless  
4 the temporary total disability exists for three consecutive weeks, in which  
5 case compensation shall be paid for the first week of such disability.  
6 Thereafter weekly payments shall be made during such temporary total  
7 disability, in a sum equal to  $66\frac{2}{3}\%$  of the average gross weekly wage of  
8 the injured employee, computed as provided in K.S.A. 44-511, and  
9 amendments thereto, but in no case less than \$25 per week nor more than  
10 the dollar amount nearest to 75% of the state's average weekly wage,  
11 determined as provided in K.S.A. 44-511, and amendments thereto, per  
12 week.

13 (2) (A) Temporary total disability exists when the employee, on  
14 account of the injury, has been rendered completely and temporarily  
15 incapable of engaging in any type of substantial and gainful employment.  
16 A release issued by a health care provider with temporary restrictions for  
17 an employee may or may not be determinative of the employee's actual  
18 ability to be engaged in any type of substantial and gainful employment,  
19 provided that if there is an authorized treating physician, such physician's  
20 opinion regarding the employee's work status shall be presumed to be  
21 determinative.

22 (B) Where the employee remains employed with the employer  
23 against whom benefits are sought, an employee shall be entitled to  
24 temporary total disability benefits if the authorized treating physician  
25 imposed temporary restrictions as a result of the work injury which the  
26 employer cannot accommodate. A refusal by the employee of  
27 accommodated work within the temporary restrictions imposed by the  
28 authorized treating physician shall result in a rebuttable presumption that  
29 the employee is ineligible to receive temporary total disability benefits.

30 (C) If the employee has been terminated for cause or voluntarily  
31 resigns following a compensable injury, the employer shall not be liable  
32 for temporary total disability benefits if the employer could have  
33 accommodated the temporary restrictions imposed by the authorized  
34 treating physician but for the employee's separation from employment.

35 (3) Where no award has been entered, a return by the employee to  
36 any type of substantial and gainful employment shall suspend the  
37 employee's right to the payment of temporary total disability  
38 compensation, but shall not affect any right the employee may have to  
39 compensation for partial disability in accordance with K.S.A. 44-510d and  
40 44-510e, and amendments thereto.

41 (4) An employee shall not be entitled to receive temporary total  
42 disability benefits for those weeks during which the employee is also  
43 receiving unemployment benefits.

1 (c) When any permanent total disability or temporary total disability  
2 is followed by partial disability, compensation shall be paid as provided in  
3 K.S.A. 44-510d and 44-510e, and amendments thereto.

4 (d) *The employer against whom benefits are sought or the employer's*  
5 *insurance carrier shall not be required to notify the injured worker or the*  
6 *injured worker's representative, either orally or in writing, of any change*  
7 *or termination of medical or disability benefits. This subsection shall not*  
8 *be construed to prohibit such notification in the discretion of the employer*  
9 *or the employer's insurance carrier.*

10 Sec. 2. K.S.A. 44-510e is hereby amended to read as follows: 44-  
11 510e. (a) In case of whole body injury resulting in temporary or permanent  
12 partial general disability not covered by the schedule in K.S.A. 44-510d,  
13 and amendments thereto, the employee shall receive weekly compensation  
14 as determined in this subsection during the period of temporary or  
15 permanent partial general disability not exceeding a maximum of 415  
16 weeks.

17 (1) Weekly compensation for temporary partial general disability  
18 shall be  $66\frac{2}{3}\%$  of the difference between the average weekly wage that the  
19 employee was earning prior to the date of injury and the amount the  
20 employee is actually earning after such injury in any type of employment.  
21 In no case shall such weekly compensation exceed the maximum as  
22 provided for in K.S.A. 44-510c, and amendments thereto.

23 (2) (A) Permanent partial general disability exists when the employee  
24 is disabled in a manner which is partial in character and permanent in  
25 quality and which is not covered by the schedule in K.S.A. 44-510d, and  
26 amendments thereto. Compensation for permanent partial general  
27 disability shall also be paid as provided in this section where an injury  
28 results in:

29 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of  
30 one upper extremity, combined with the loss of or loss of use of a shoulder,  
31 arm, forearm or hand of the other upper extremity;

32 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower  
33 extremity, combined with the loss of or loss of use of a leg, lower leg or  
34 foot of the other lower extremity; or

35 (iii) the loss of or loss of use of both eyes.

36 (B) The extent of permanent partial general disability shall be the  
37 percentage of functional impairment the employee sustained on account of  
38 the injury as established by competent medical evidence and based on the  
39 fourth edition of the American medical association guides to the evaluation  
40 of permanent impairment, if the impairment is contained therein, until  
41 January 1, 2015, but for injuries occurring on and after January 1, 2015,  
42 based on the sixth edition of the American medical association guides to  
43 the evaluation of permanent impairment, if the impairment is contained

1 therein.

2 (C) An employee may be eligible to receive permanent partial general  
3 disability compensation in excess of the percentage of functional  
4 impairment~~(, "work disability")~~, if:

5 (i) The percentage of functional impairment determined to be caused  
6 solely by the injury exceeds 7½% to the body as a whole or the overall  
7 functional impairment is equal to or exceeds 10% to the body as a whole  
8 in cases where there is preexisting functional impairment; and

9 (ii) the employee sustained a post-injury wage loss,~~as defined in~~  
10 ~~subsection (a)(2)(E) of K.S.A. 44-510e, and amendments thereto~~, of at  
11 least 10% ~~which~~ *that* is directly attributable to the work injury and not to  
12 other causes or factors.

13 In such cases, the extent of work disability is determined by averaging  
14 together the percentage of post-injury task loss demonstrated by the  
15 employee to be caused by the injury and the percentage of post-injury  
16 wage loss demonstrated by the employee to be caused by the injury.

17 (D) "Task loss"~~shall mean~~ *means* the percentage to which the  
18 employee, in the opinion of a licensed physician, has lost the ability to  
19 perform the work tasks that the employee performed in any substantial  
20 gainful employment during the five-year period preceding the injury. The  
21 permanent restrictions imposed by a licensed physician as a result of the  
22 work injury shall be used to determine those work tasks which the  
23 employee has lost the ability to perform. If the employee has preexisting  
24 permanent restrictions, any work tasks which the employee would have  
25 been deemed to have lost the ability to perform, had a task loss analysis  
26 been completed prior to the injury at issue, shall be excluded for the  
27 purposes of calculating the task loss which is directly attributable to the  
28 current injury.

29 (E) "Wage loss"~~shall mean~~ *means* the difference between the average  
30 weekly wage the employee was earning at the time of the injury and the  
31 average weekly wage the employee is capable of earning after the injury.  
32 The capability of a worker to earn post-injury wages shall be established  
33 based upon a consideration of all factors, including, but not limited to, the  
34 injured worker's age, physical capabilities, education and training, prior  
35 experience, and availability of jobs in the open labor market. The  
36 administrative law judge shall impute an appropriate post-injury average  
37 weekly wage based on such factors. Where the employee is engaged in  
38 post-injury employment for wages, there shall be a rebuttable presumption  
39 that the average weekly wage an injured worker is actually earning  
40 constitutes the post-injury average weekly wage that the employee is  
41 capable of earning. The presumption may be overcome by competent  
42 evidence.

43 (i) To establish post-injury wage loss, the employee must have the

1 legal capacity to enter into a valid contract of employment. Wage loss  
 2 caused by voluntary resignation or termination for cause shall in no way  
 3 be construed to be caused by the injury.

4 (ii) The actual or projected weekly value of any employer-paid fringe  
 5 benefits are to be included as part of the worker's post-injury average  
 6 weekly wage and shall be added to the wage imputed by the administrative  
 7 law judge pursuant to K.S.A. 44-510e(a)(2)(E), and amendments thereto.

8 (iii) The injured worker's refusal of accommodated employment  
 9 within the worker's medical restrictions as established by the authorized  
 10 treating physician and at a wage equal to 90% or more of the pre-injury  
 11 average weekly wage shall result in a rebuttable presumption of no wage  
 12 loss.

13 (F) The amount of compensation for whole body injury under this  
 14 section shall be determined by multiplying the payment rate by the weeks  
 15 payable. As used in this section:

16 ~~(+)~~(i) The payment rate shall be the lesser of:

17 ~~(A)~~(a) The amount determined by multiplying the average weekly  
 18 wage of the worker prior to such injury by  $66\frac{2}{3}\%$ ; or

19 ~~(B)~~(b) the maximum provided in K.S.A. 44-510c, and amendments  
 20 thereto;

21 ~~(2)~~(ii) weeks payable shall be determined as follows:

22 ~~(A)~~(a) Determine the weeks of temporary compensation paid by  
 23 adding the amounts of temporary total and temporary partial disability  
 24 compensation paid and dividing the sum by the payment rate above;

25 ~~(B)~~(b) subtract from 415 weeks the total number of weeks of  
 26 temporary compensation paid as determined in ~~(F)(2)(A)~~ (F)(ii)(a),  
 27 excluding the first 15 such weeks; and

28 ~~(3)~~(iii) multiply the number of weeks as determined in ~~(F)(2)(B)~~ (F)  
 29 (ii)(b) by the percentage of functional impairment pursuant to subsection  
 30 (a)(2)(B) or the percentage of work disability pursuant to subsection (a)(2)  
 31 (C), whichever is applicable.

32 (3) When an injured worker is eligible to receive an award of work  
 33 disability, compensation is limited to the value of the work disability as  
 34 calculated above. In no case shall functional impairment and work  
 35 disability be awarded together.

36 The resulting award shall be paid for the number of disability weeks at  
 37 the payment rate until fully paid or modified. In any case of permanent  
 38 partial disability under this section, the employee shall be paid  
 39 compensation for not to exceed 415 weeks following the date of such  
 40 injury. If there is an award of permanent disability as a result of the  
 41 compensable injury, there shall be a presumption that disability existed  
 42 immediately after such injury. Under no circumstances shall the period of  
 43 permanent partial disability run concurrently with the period of temporary

1 total or temporary partial disability.

2 (b) If an employee has sustained an injury for which compensation is  
3 being paid, and the employee's death is caused by other and independent  
4 causes, any payment of compensation already due the employee at the  
5 time of death and then unpaid shall be paid to the employee's dependents  
6 directly or to the employee's legal representatives if the employee left no  
7 dependent, but the liability of the employer for the payments of  
8 compensation not yet due at the time of the death of such employee shall  
9 cease and be abrogated by the employee's death.

10 (c) The total amount of compensation that may be allowed or  
11 awarded an injured employee for all injuries received in any one accident  
12 shall in no event exceed the compensation which would be payable under  
13 the workers compensation act for 100% permanent total disability  
14 resulting from such accident.

15 (d) Where a minor employee or a minor employee's dependents are  
16 entitled to compensation under the workers compensation act, such  
17 compensation shall be exclusive of all other remedies or causes of action  
18 for such injury or death, and no claim or cause of action against the  
19 employer shall inure or accrue to or exist in favor of the parent or parents  
20 of such minor employee on account of any damage resulting to such parent  
21 or parents on account of the loss of earnings or loss of service of such  
22 minor employee.

23 (e) In any case of injury to or death of an employee, where the  
24 employee or the employee's dependents are entitled to compensation under  
25 the workers compensation act, such compensation shall be exclusive of all  
26 other remedies or causes of action for such injury or death, and no claim or  
27 action shall inure, accrue to or exist in favor of the surviving spouse or any  
28 relative or next of kin of such employee against such employer on account  
29 of any damage resulting to such surviving spouse or any relative or next of  
30 kin on account of the loss of earnings, services, or society of such  
31 employee or on any other account resulting from or growing out of the  
32 injury or death of such employee.

33 (f) *The employer against whom benefits are sought or the employer's*  
34 *insurance carrier shall not be required to notify the injured worker or the*  
35 *injured worker's representative, either orally or in writing, of any change*  
36 *or termination of medical or disability benefits. This subsection shall not*  
37 *be construed to prohibit such notification in the discretion of the employer*  
38 *or the employer's insurance carrier.*

39 Sec. 3. K.S.A. 44-510h is hereby amended to read as follows: 44-  
40 510h. (a) (1) It shall be the duty of the employer to provide the services of  
41 a healthcare provider and such medical, surgical and hospital treatment,  
42 including nursing, medicines, medical and surgical supplies, ambulance,  
43 crutches, apparatus and transportation to and from the home of the injured

1 employee to a place outside the community in which such employee  
2 resides and within such community if the director, in the director's  
3 discretion, so orders, including transportation expenses computed in  
4 accordance with K.S.A. 44-515(a), and amendments thereto, as may be  
5 reasonably necessary to cure and relieve the employee from the effects of  
6 the injury. *The right of the employer to direct medical treatment shall not*  
7 *be infringed upon or limited except pursuant to the procedure as provided*  
8 *by subsection (b)(1).*

9 (2) *The patient privilege preventing the furnishing of medical*  
10 *information by a healthcare provider, hospital or other healthcare*  
11 *professional is waived by an injured employee seeking workers*  
12 *compensation benefits with respect to all records, before and after the*  
13 *injury, that relate to the body part or parts affected by the accident,*  
14 *repetitive trauma or occupational disease. All such reports, records or*  
15 *other data concerning examinations, testing or treatment of the injured*  
16 *employee shall be furnished to the employer or the employer's insurance*  
17 *carrier at the employer or the insurance carrier's request without the*  
18 *necessity of a release signed by the injured employee. The employer or the*  
19 *employer's insurance carrier may communicate with the injured*  
20 *employee's healthcare provider, hospital or other healthcare professional,*  
21 *either orally or in writing, without prior authorization of the injured*  
22 *employee or the injured employee's legal representative. The employer or*  
23 *the employer's insurance carrier shall not be required to memorialize*  
24 *communications with the injured employee's healthcare provider, hospital*  
25 *or other healthcare professional but may do so in the discretion of the*  
26 *employer or employer's insurance provider. If such communications are*  
27 *memorialized, they may be, but shall not be required to be, shared with the*  
28 *injured employee upon the injured employee's request.*

29 (b) (1) If the director finds, upon application of an injured employee,  
30 that the services of the healthcare provider furnished as provided in  
31 subsection (a) and rendered on behalf of the injured employee are not  
32 satisfactory, the director may authorize the appointment of some other  
33 healthcare provider. In any such case, the employer shall submit the names  
34 of two healthcare providers who, if possible given the availability of local  
35 healthcare providers, are not associated in practice together. The injured  
36 employee may select one from the list who shall be the authorized treating  
37 healthcare provider. If the injured employee is unable to obtain satisfactory  
38 services from any of the healthcare providers submitted by the employer  
39 under this paragraph, either party or both parties may request the director  
40 to select a treating healthcare provider.

41 (2) Without application or approval, an employee may consult a  
42 healthcare provider of the employee's choice for the purpose of  
43 examination, diagnosis or treatment, but the employer shall only be liable

1 for the fees and charges of such healthcare provider up to a total amount of  
2 \$500. The amount allowed for such examination, diagnosis or treatment  
3 shall not be used to obtain a functional impairment rating. Any medical  
4 opinion obtained in violation of this prohibition shall not be admissible in  
5 any claim proceedings under the workers compensation act.

6 (c) An injured employee whose injury or disability has been  
7 established under the workers compensation act may rely, if done in good  
8 faith, solely or partially on treatment by prayer or spiritual means in  
9 accordance with the tenets of practice of a church or religious  
10 denomination without suffering a loss of benefits subject to the following  
11 conditions:

12 (1) The employer or the employer's insurance carrier agrees thereto in  
13 writing either before or after the injury;

14 (2) the employee submits to all physical examinations required by the  
15 workers compensation act;

16 (3) the cost of such treatment shall be paid by the employee unless  
17 the employer or insurance carrier agrees to make such payment;

18 (4) the injured employee shall be entitled only to benefits that would  
19 reasonably have been expected had such employee undergone medical or  
20 surgical treatment; and

21 (5) the employer or insurance carrier that made an agreement under  
22 paragraph (1) or (3) may withdraw from the agreement on 10 days' written  
23 notice.

24 (d) In any employment to which the workers compensation act  
25 applies, the employer shall be liable to each employee who is employed as  
26 a duly authorized law enforcement officer, firefighter, an emergency  
27 medical service provider as defined in K.S.A. 65-6112, and amendments  
28 thereto, or a member of a regional emergency medical response team as  
29 provided in K.S.A. 48-928, and amendments thereto, including any person  
30 who is serving on a volunteer basis in such capacity, for all reasonable and  
31 necessary preventive medical care and treatment for hepatitis to which  
32 such employee is exposed under circumstances arising out of and in the  
33 course of employment.

34 (e) It is presumed that the employer's obligation to provide the  
35 services of a healthcare provider and such medical, surgical and hospital  
36 treatment, including nursing, medicines, medical and surgical supplies,  
37 ambulance, crutches, apparatus and transportation to and from the home of  
38 the injured employee to a place outside the community in which such  
39 employee resides and within such community if the director, in the  
40 director's discretion, so orders, including transportation expenses  
41 computed in accordance with K.S.A. 44-515(a), and amendments thereto,  
42 shall terminate upon the employee reaching maximum medical  
43 improvement. Such presumption may be overcome with medical evidence



1 that it is more probably true than not that additional medical treatment will  
2 be necessary after such time as the employee reaches maximum medical  
3 improvement. As used in this subsection, "medical treatment" means only  
4 that treatment provided or prescribed by a licensed healthcare provider and  
5 shall not include home exercise programs or over-the-counter medications.

6 *(f) The employer or the employer's insurance carrier shall not be*  
7 *required to notify the injured worker or the injured worker's*  
8 *representative, either orally or in writing, of any change or termination of*  
9 *medical or disability benefits. This subsection shall not be construed to*  
10 *prohibit such notification in the discretion of the employer or the*  
11 *employer's insurance carrier.*

12 Sec. 4. K.S.A. 44-510k is hereby amended to read as follows: 44-  
13 510k. (a) (1) At any time after the entry of an award for compensation  
14 wherein future medical benefits were awarded, the employee, employer or  
15 insurance carrier may make application for a hearing, in such form as the  
16 director may require for the furnishing, termination or modification of  
17 medical treatment. Such post-award hearing shall be held by the assigned  
18 administrative law judge, in any county designated by the administrative  
19 law judge, and the judge shall conduct the hearing as provided in K.S.A.  
20 44-523, and amendments thereto.

21 (2) The administrative law judge can (A) make an award for further  
22 medical care if the administrative law judge finds that it is more probably  
23 true than not that the injury which was the subject of the underlying award  
24 is the prevailing factor in the need for further medical care and that the  
25 care requested is necessary to cure or relieve the effects of such injury, or  
26 (B) terminate or modify an award of current or future medical care if the  
27 administrative law judge finds that no further medical care is required, the  
28 injury which was the subject of the underlying award is not the prevailing  
29 factor in the need for further medical care, or that the care requested is not  
30 necessary to cure or relieve the effects of such injury.

31 (3) If the claimant has not received medical treatment, as defined in  
32 subsection (e) of K.S.A. 44-510h, and amendments thereto, from an  
33 authorized health care provider within two years from the date of the  
34 award or two years from the date the claimant last received medical  
35 treatment from an authorized health care provider, the employer shall be  
36 permitted to make application under this section for permanent termination  
37 of future medical benefits. In such case, there shall be a presumption that  
38 no further medical care is needed as a result of the underlying injury. The  
39 presumption may be overcome by competent medical evidence.

40 (4) No post-award benefits shall be ordered, modified or terminated  
41 without giving all parties to the award the opportunity to present evidence,  
42 including taking testimony on any disputed matters. A finding with regard  
43 to a disputed issue shall be subject to a full review by the board under

1 subsection (b) of K.S.A. 44-551, and amendments thereto. Any action of  
2 the board pursuant to post-award orders shall be subject to review under  
3 K.S.A. 44-556, and amendments thereto.

4 (b) Any application for hearing made pursuant to this section shall  
5 receive priority setting by the administrative law judge, only superseded  
6 by preliminary hearings pursuant to K.S.A. 44-534a, and amendments  
7 thereto. The parties shall meet and confer prior to the hearing pursuant to  
8 this section, but a prehearing settlement conference shall not be necessary.  
9 The administrative law judge shall have authority to award medical  
10 treatment relating back to the entry of the underlying award, but in no  
11 event shall such medical treatment relate back more than six months  
12 following the filing of such application for post-award medical treatment.  
13 Reviews taken under this section shall receive priority settings before the  
14 board, only superseded by reviews for preliminary hearings. A decision  
15 shall be rendered by the board within 30 days from the time the review  
16 hereunder is submitted.

17 (c) The administrative law judge may award attorney fees and costs  
18 on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536,  
19 and amendments thereto. As used in this subsection, "costs" include, but  
20 are not limited to, witness fees, mileage allowances, any costs associated  
21 with reproduction of documents that become a part of the hearing record,  
22 the expense of making a record of the hearing and such other charges as  
23 are by statute authorized to be taxed as costs. *"Costs" do not include costs*  
24 *incurred by the claimant to obtain an expert opinion or any fees or costs*  
25 *incurred for the testimony by an expert witness at a hearing or deposition.*

26 Sec. 5. K.S.A. 44-511 is hereby amended to read as follows: 44-511.

27 (a) As used in this section:

28 (1) The term "money" ~~shall be construed to mean~~ *means* the gross  
29 remuneration, on an hourly, output, salary, commission or other basis  
30 earned while employed by the employer, including bonuses and gratuities.  
31 Money shall not include any additional compensation, as defined in  
32 paragraph (2).

33 (2) (A) The term "additional compensation" ~~shall include and mean~~  
34 *means and includes* only the following: (i) Board and lodging when  
35 furnished by the employer as part of the wages, which shall be valued at a  
36 maximum of \$25 per week for board and lodging combined, unless the  
37 value has been fixed otherwise by the employer and employee prior to the  
38 date of the accident or injury, or unless a higher weekly value is proved;  
39 and (ii) employer-paid life insurance, disability insurance, health and  
40 accident insurance and employer contributions to pension and profit  
41 sharing plans.

42 (B) In no case shall additional compensation include any amounts of  
43 employer taxes paid by the employer under the old-age and survivors

1 insurance system embodied in the federal social security system.

2 (C) Additional compensation shall not be included in the calculation  
3 of average wage until and unless such additional compensation is  
4 discontinued. If such additional compensation is discontinued subsequent  
5 to a computation of average weekly wages under this section, there shall  
6 be a recomputation to include such discontinued additional compensation.

7 (3) The term "wage" ~~shall be construed to mean~~ *means* the total of the  
8 money and any additional compensation that the employee receives for  
9 services rendered for the employer in whose employment the employee  
10 sustains an injury arising out of and in the course of such employment.

11 (b) (1) Unless otherwise provided, the employee's average weekly  
12 wage for the purpose of computing any compensation benefits provided by  
13 the workers compensation act shall be the wages the employee earned  
14 during the calendar weeks employed by the employer, up to 26 calendar  
15 weeks immediately preceding the date of the injury, divided by the number  
16 of calendar weeks the employee actually worked, or by 26 as the case may  
17 be. *For the purposes of calculating the employee's average weekly wage, a*  
18 *week in which the employee actually worked for any part of such week*  
19 *shall be considered a week of actual employment.*

20 (2) If actually employed by the employer for less than one calendar  
21 week immediately preceding the accident or injury, the average weekly  
22 wage shall be determined by the administrative law judge based upon all  
23 of the evidence and circumstances, including the usual wage for similar  
24 services paid by the same employer, or if the employer has no employees  
25 performing similar services, the usual wage paid for similar services by  
26 other employers. The average weekly wage so determined shall not exceed  
27 the actual average weekly wage the employee was reasonably expected to  
28 earn in the employee's specific employment, including the average weekly  
29 value of any additional compensation.

30 (3) The average weekly wage of an employee who performs the same  
31 or a very similar type of work on a part-time basis for each of two or more  
32 employers, shall be the sum of the average weekly wages of such  
33 employee paid by each of the employers.

34 (4) In determining an employee's average weekly wage with respect  
35 to the employer against whom claim for compensation is made, no money  
36 or additional compensation paid to or received by the employee from such  
37 employer, or from any source other than from such employer, shall be  
38 included as wages, except as provided in this section. No wages, other  
39 compensation or benefits of any type, except as provided in this section,  
40 shall be considered or included in determining the employee's average  
41 weekly wage.

42 (5) (A) The average weekly wage of a person serving on a volunteer  
43 basis as a duly authorized law enforcement officer, emergency medical

1 service provider as provided in K.S.A. 44-508, and amendments thereto,  
2 firefighter or member of a regional emergency medical response team as  
3 provided in K.S.A. 48-928, and amendments thereto, who receives no  
4 wages for such services, or who receives wages that are substantially less  
5 than the usual wages paid for such services by comparable employers to  
6 employees who are not volunteers, shall be computed on the basis of the  
7 dollar amount closest to, but not exceeding, 112½% of the state average  
8 weekly wage.

9 (B) The average weekly wage of any person performing community  
10 service work shall be deemed to be \$37.50.

11 (C) The average weekly wage of a volunteer member of the Kansas  
12 department of civil air patrol officially engaged in the performance of  
13 functions specified in K.S.A. 48-3302, and amendments thereto, shall be  
14 deemed to be \$476.38. Whenever the rates of compensation of the pay  
15 plan for persons in the classified service under the Kansas civil service act  
16 are increased for payroll periods chargeable to fiscal years commencing  
17 after June 30, 1988, the average weekly wage that is deemed to be the  
18 average weekly wage under the provisions of this subsection for a  
19 volunteer member of the Kansas department of civil air patrol shall be  
20 increased by an amount, adjusted to the nearest dollar, computed by  
21 multiplying the average of the percentage increases in all monthly steps of  
22 such pay plan by the average weekly wage deemed to be the average  
23 weekly wage of such volunteer member under the provisions of this  
24 subsection prior to the effective date of such increase in the rates of  
25 compensation of the pay plan for persons in the classified service under  
26 the Kansas civil service act.

27 (D) The average weekly wage of any other volunteer under the  
28 workers compensation act, who receives no wages for such services, or  
29 who receives wages that are substantially less than the usual wages paid  
30 for such services by comparable employers to employees who are not  
31 volunteers, shall be computed on the basis of the usual wages paid by the  
32 employer for such services to employees who are not volunteers, or, if the  
33 employer has no employees performing such services for wages who are  
34 not volunteers, the average weekly wage shall be computed on the basis of  
35 the usual wages paid for such services by comparable employers to  
36 employees who are not volunteers. Volunteer employment is not presumed  
37 to be full-time employment.

38 (c) The state's average weekly wage for any year shall be the average  
39 weekly wage paid to employees in insured work subject to Kansas  
40 employment security law as determined annually by the secretary of labor  
41 as provided in K.S.A. 44-704, and amendments thereto.

42 (d) Members of a labor union or other association who perform  
43 services on behalf of the labor union or other association and who are not

1 paid as full-time employees of the labor union or other association and  
2 who are injured or suffer occupational disease in the course of the  
3 performance of duties on behalf of the labor union or other association  
4 shall recover compensation benefits under the workers compensation act  
5 from the labor union or other association if the labor union or other  
6 association files an election with the director to bring its members who  
7 perform such services under the coverage of the workers compensation  
8 act. The average weekly wage for the purpose of this subsection shall be  
9 based on what the employee would earn in the employee's general  
10 occupation if at the time of the injury the employee had been performing  
11 work in the employee's general occupation. The insurance coverage shall  
12 be furnished by the labor union or other association.

13 Sec. 6. K.S.A. 44-516 is hereby amended to read as follows: 44-516.

14 (a) In case of a dispute as to the injury, the director, in the director's  
15 discretion, or upon request of either party, may employ one or more  
16 neutral health care providers, not exceeding three in number, who shall be  
17 of good standing and ability. The health care providers shall make such  
18 examinations of the injured employee as the director may direct. The  
19 report of any such health care provider shall be considered by the  
20 administrative law judge in making the final determination.

21 (b) If at least two medical opinions based on competent medical  
22 evidence disagree as to the percentage of functional impairment, such  
23 matter may be referred by the administrative law judge to an independent  
24 health care provider who shall be agreed upon by the parties. Where the  
25 parties cannot agree, an independent healthcare provider shall be selected  
26 by the administrative law judge. The health care provider agreed to by the  
27 parties or selected by the administrative law judge pursuant to this section  
28 shall issue an opinion regarding the employee's functional impairment  
29 which shall be considered by the administrative law judge in making the  
30 final determination.

31 (c) *If the director orders a medical examination pursuant to this*  
32 *section, then prior to such examination, the director shall communicate in*  
33 *writing to the examining healthcare provider the medical questions to be*  
34 *answered by the healthcare provider that may be applicable to the case.*

35 Sec. 7. K.S.A. 44-510c, 44-510e, 44-510h, 44-510k, 44-511 and 44-  
36 516 are hereby repealed.

37 Sec. 8. This act shall take effect and be in force from and after its  
38 publication in the statute book.